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No. 617

Supreme Court of the United States

OCTOBER TERM, 1942

MORRIS I. JAYNE; ~~LELIA~~ LELIA G. JAYNE; and LELIA JAYNE,
Guardian of the Person and Estate of Morris In-
galls Jayne, Incompetent,
Petitioners,

VERSUS

NATIONAL LIFE INSURANCE COMPANY, a Corporation,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF AP-
PEALS FOR THE TENTH CIRCUIT
AND BRIEF IN SUPPORT
THEREOF**

JOHN H. CANTRELL,
Counsel for Petitioners.

December, 1942.

UTTERBACK TYPESETTING CO., OKLAHOMA CITY, OKLA.

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galls Jayne, Incompetent,
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NATIONAL LIFE INSURANCE COMPANY, a Corporation,
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**PETITION FOR WRIT OF CERTIORARI TO THE
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PEALS FOR THE TENTH CIRCUIT**

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States: -*

Petitioners, Morris I. Jayne, Lelia G. Jayne, and Lelia Jayne, Guardian of the Person and Estate of Morris Ingalls Jayne, Incompetent, jointly and severally pray that a Writ of Certiorari issue to review the decision of the United States Circuit Court of Appeals for the Tenth Circuit rendered October 30, 1942 (R. 20, 25), opinion corrected, and Petition for Rehearing (R. 31-42) denied December 11, 1942 (R. 44), reversing a judgment of the District Court for the Western District of Oklahoma filed February 9, 1942 (R. 12, 16). That judgment dismissed the action of the re-

spondent (R. 16, 4..) by which it sought to cancel a life insurance policy, to recover sums previously paid thereunder, and to determine the absence of future liability thereon under the permanent total disability rider attached thereto (R. 4-10).

JURISDICTION

Jurisdiction is based on §240(a) of the Judicial Code as amended, 28 U. S. Code §347, the jurisdiction of the courts below being based on diversity of citizenship and the existence of the requisite amount in controversy as provided by §24 of the Judicial Code as amended (R. 4, 12).

The judgment below was entered October 30, 1942 (R. 25), opinion corrected and Petition for Rehearing denied December 11, 1942 (R. 44).

SUMMARY STATEMENT

Respondent alleged in its Complaint (R. 5) that on May 23, 1930, Lelia Jayne was appointed Guardian of the Person and Estate of the insured, an incompetent, and that she duly qualified as such guardian (R. 5); that subsequently she filed a claim with the respondent, stating that the insured was totally and permanently disabled, and that as often thereafter as the respondent has requested it, she has represented in writing to the respondent that the insured, Morris I. Jayne, was totally and permanently disabled; that since June 18, 1930, respondent has paid the guardian monthly sums aggregating \$13,200.00, and has waived payment of premiums amounting to \$3,879.70 (R. 5); that the insured, Morris I. Jayne, is not now totally

and permanently disabled, and has not been so since prior to June 18, 1936; that the insured is actively engaged in the business of producing oil and gas and in brokering oil and gas leases (R. 5-6), habitually causing the lease contracts and evidences of title to property to be taken in the name of Lelia G. Jayne; that insured is competent to, and does, negotiate for and purchase oil and gas leases and other property, and that he takes the title as aforesaid, for the purpose of defrauding respondent and as a part of a scheme for that purpose (R. 6); that the insured conducts himself as an ordinary, normal, healthy businessman, and that Lelia G. Jayne, as guardian and as wife, has conspired to represent that the insured is, and was on all dates subsequent to June 18, 1936, totally and permanently disabled and entitled to the benefits payable under said rider (R. 6); that respondent is entitled to recover the amount of the monthly disability benefits actually paid since June 18, 1936, and to recover the premiums waived since said date, and to a judgment canceling the policy for nonpayment of premiums, and to a declaratory judgment determining no further liability under said disability rider (R. 6-7).

Petitioners moved to dismiss (R. 10) on the grounds, *inter alia*, (1) no jurisdiction over the subject-matter, (2) failure of the Complaint to state a claim upon which relief could be granted, and that (3) the Oklahoma Statute of Limitations bars recovery.

Respondent admitted in its brief in the Circuit Court of Appeals that Jayne was insane in 1930 (R. 20), that he was adjudged incompetent in 1930 (R. 19), was then per-

manently and totally disabled, was never judicially restored to competency (R. 19), and that if he is still insane, he is totally and permanently disabled and entitled to the disability benefits provided by the policy (R. 19, 20).

The Decisions Below

Deeming the suit to be a collateral attack upon a judgment of a state court of competent and exclusive jurisdiction, the trial court sustained the Motion to Dismiss the action (R. 15, 16).

The Circuit Court of Appeals reversed (R. 25-26), ignoring the mandate contained in *Erie Ry. Co. v. Tompkins*, 304 U. S. 64, and in so doing, refused to follow, or apply, the local law applicable to the case, as found in the statutes of the State of Oklahoma and in the decisions of the Supreme Court of that State, as well as other decisions of the Tenth Circuit Court of Appeals, and a decision of the Circuit Court of Appeals for the Second Circuit, and an opinion of the Court of Appeals of the District of Columbia. While expressly recognizing (R. 23) that in Oklahoma, an adjudication of insanity is conclusive on all parties until restoration to competency by judicial decree by the court of adjudication, the Circuit Court of Appeals, creating a conflict on the face of its own opinion (R. 24-25), refused to apply the announced and settled rule in this case, holding in spite of it, that an adjudication of insanity is only *prima facie* evidence of that fact, the Court saying:

“At most, it can be presumptive evidence only of subsequent insanity.” (R. 25.)

The Court also refused to give effect to, or to notice controlling admissions of fact by respondent, though they were insisted on repeatedly by petitioners, and wholly ignored a directly tendered issue of Limitations.

Statutes and Oklahoma Decisions Involved

Section 851, O. S. 1941, Title 58:

"When it is represented to the county court upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, the judge must cause notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing."

Section 852, O. S. 1941, Title 58:

"If after a full hearing and examination upon such petition, it appears to the judge of the county court that the person in question is incapable of taking care of himself and managing his property, he must appoint a guardian of his person and estate, with the powers and duties in this article specified."

Section 94, O. S. 1941, Title 35:

"The terms 'insane' or 'insane persons' as used in this Act, include every species of insanity and extend to every deranged person, and to all of unsound mind other than idiots and imbeciles, * * *."

Section 24, O. S. 1941, Title 15:

"After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor designate any power, nor waive any

right, until his restoration to capacity is judicially determined. But if actually restored to capacity, he may make a will, though his restoration is not thus determined."

Groenewold v. Groenewold (dec. Nov. 4, 1941, by Okla. Sup. Ct., not yet officially reported, 12 Okla. Bar Journal No. 45, p. 1605);

Oklahoma Natural Gas Corporation v. Lay, 175 Okla. 75, 51 Pac. (2d) 580;

New York Life Insurance Company v. Razzook, 178 Okla. 57, 61 Pac. (2d) 686.

Questions Presented

1. Where there has been a judicial determination of a continuing status of an individual by a state court of competent and even exclusive jurisdiction, in which determination and in which status there is inherent the establishment of certain controlling facts, can plaintiff be heard, or permitted, to dispute those facts, or another court be permitted to readjudicate them, where, under the local law, the previous adjudication is conclusive until revoked by judicial action of that court?

2. Is an Appellate Court entitled, or permitted, to ignore and disregard entirely, controlling admissions of fact made by a party in printed briefs during the course of the litigation?

3. Was the Circuit Court of Appeals justified in ignoring decisions of the Supreme Court of Oklahoma as to what constitutes "permanent total disability"?

4. Should the Oklahoma Statute of Limitations be applied to bar the action of respondent, or any part thereof?

Reasons Relied On for the Allowance of the Writ

1. The decision below is in direct conflict with the decisions of this Court in *Erie Railway Company v. Tompkins*, 304 U. S. 64; *Covell v. Heyman*, 111 U. S. 176; *Hilton v. Guyot*, 159 U. S. 113; and *Pennoyer v. Neff*, 95 U. S. 679.

2. The decision below is in direct conflict with and wholly ignores the effect of the decisions of the Supreme Court of Oklahoma in *Groenewold v. Groenewold* (not yet officially reported, 12 Oklahoma Bar Journal No. 45, page 1605); *Oklahoma Natural Gas Corporation v. Lay*, 175 Okla. 75, 51 Pac. (2d) 580; and *New York Life Insurance Company v. Razzook*, 178 Okla. 57, 61 Pac. (2d) 686.

3. The decision below is in direct conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Chaloner v. Sherman*, 215 Fed. 867 (aff. 242 U. S. 455), and with the opinion and reasoning of the Court of Appeals of the District of Columbia in *Forbes v. Welch*, 286 Fed. 765, 768.

4. The main question presented is one of general public importance, and the decision below constitutes a plain departure from the established rule as announced in *Erie Railway Company v. Tompkins*, *supra*.

5. In the decision below, the court has so far departed from the accepted and usual course of judicial pro-

ceedings, by ignoring and refusing to give effect to controlling admissions of fact made of record by respondent, that an exercise of this Court's power of supervision is called for.

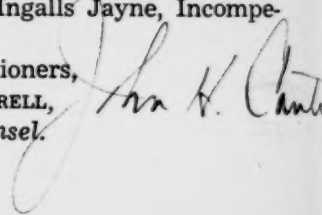
6. The same reason as that last given is equally applicable to the court's refusal to pass upon the question of Limitations.

Wherefore, petitioners respectfully pray that a Writ of Certiorari issue out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Tenth Circuit commanding that Court to certify and send to this Court for its review and determination, a full and complete transcript of the record below, and that the decision of said Circuit Court of Appeals be reversed and the decision of the District Court be reinstated, and that petitioners have such other and further relief as may be just.

Morris I. Jayne; Lelia G. Jayne; and Lelia
Jayne, Guardian of the Person and Es-
tate of Morris Ingalls Jayne, Incompe-
tent,

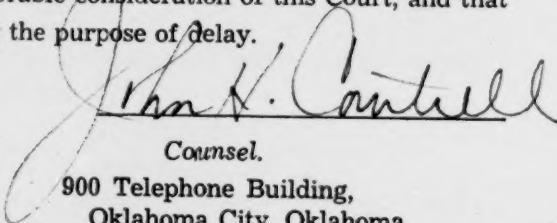
Petitioners,

By JOHN H. CANTRELL,
Counsel.

A large, stylized handwritten signature in dark ink, which appears to read "John H. Cantrell", is written over the printed name and extends upwards into the "Petitioners," line.

CERTIFICATE

I hereby certify that I have examined the foregoing Petition and that in my opinion it is well founded and entitled to the favorable consideration of this Court, and that it is not filed for the purpose of delay.



John H. Cantrell

Counsel.

900 Telephone Building,
Oklahoma City, Oklahoma.

Dated: Oklahoma City, Oklahoma,
December 30, 1942.